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EXAMINER	
STERRETT, JONATHAN G	
ART UNIT	**PAPER NUMBER**
3623	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/904,501	SULLIVAN ET AL.	
	Examiner	Art Unit	
	Jonathan G. Sterrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Summary

1. **Claims 1-29** are pending in the application.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 1-14** are rejected under 35 U.S.C. 101 because the invention is directed to non-statuatory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts: and

(2) whether the invention produces a useful, concrete and tangible result.

4. For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case, none of **Claims 1-14** are directed to anything in the technological arts as explained above. Specifically for **Claim 1,** the limitation "**evaluating the metric with respect to each of at least one key factor**" is cited. This limitation can be performed manually without utilizing

technological elements, for example, by writing evaluations on pencil and paper. Further in **Claim 1**, the limitation "**combining the factor scores to form a final weighted numerical assessment**" is cited. These limitations can be performed manually without utilizing technological elements. Looking at the claims as a whole, nothing in the body of the claims recites any structure or functionality to suggest that a computer or any technology performs the recited steps.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention provides for rating enterprise metrics, which is a useful, concrete and tangible result. Although the recited process produces a useful, concrete and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, **Claims 1-14** are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 11 and 25** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 11 and 25, in step ii the limitation 'scoring the recency and automation of the validation to form an integrity data score'. It is not clear to the examiner how one of ordinary skill in the art would score two separate factors, i.e. the recency of a validation and the automation of the validation, 'to

form' an integrity data score. Does the 'forming' cited in the limitation comprise arithmetic or mathematic operations? It is not clear how two separate factors are scored and 'formed' to result in an integrity data score, which is one value. Therefore the claim is indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. **Claims 1, 2, 4, 6, 8, 10, 14, 15, 16, 18, 20, 22, 24, 28 and 29** are rejected under 35 U.S.C. 102(a) as being anticipated by **Wakeman US 6,353,767 (hereinafter Wakeman)**.

Regarding **Claim 1**, Wakeman discloses:

(a) evaluating the metric with respect to each of at least one key factor to produce a factor score for each key factor; and

Column 2 line 38-40, z factor evaluates confidence in metric (i.e. scorecards) by combining factors.

Column 4 line 36-40, factors are combined to produce a Z-factor for the combined factors. The combined factors provide an evaluation of the metric.

(b) when there is more than one factor score, combining the factor scores to form a final weighted numerical assessment for the metric.

Column 4 line 47-50, different factors (i.e. categories) can be weighted differently, for example, based on historical factors. The weights provide a final weighted numerical assessment for the metric – see column 4 line 60 for a sample equation combining all weighted factors.

Regarding **Claim 2**, Wakeman discloses:

wherein said step (a) comprises the step of evaluating the metric with respect to a source of data that is used in developing the metric.

Column 8 line 21-24, evaluating the Z metric in (a) above requires taking into account the maturity of the source data – in this example, the field data for new parts may require a broader z-metric (i.e. less confidence in the data) than when experience is accumulated with the parts.

Regarding **Claim 4**, Wakeman discloses:

wherein said step (a) comprises the step of evaluating the metric with respect to business rules used in developing the metric.

Column 4 line 61-63, a weighted equation is used to determine the confidence score for a particular metric – this equation can be weighted to place more emphasis on factors that have more impact on, Reliability for example.

Column 4 line 64-66, the confidence score for the metric is weighted with respect to business rules, such as the overall design process (i.e. rules associated with the design process).

Regarding **Claim 6**, Wakeman discloses:

wherein said step (a) comprises the step of evaluating the process used in the production of the metric.

Column 4 line 7-10, confidence scores provide evaluation of the process used to produce the metric, in this case the reliability metric is evaluated using a confidence score – see figure 1 'confidence in reliability prediction'.

Regarding **Claim 8**, Wakeman discloses:

wherein said step (a) comprises the step of evaluating the metric with respect to mathematical stability of the metric.

Column 6 line 24-27 and line 45-49, the z factors provide a confidence interval for a particular metric; the confidence interval provides an evaluation of the metric with respect to the amount of its variation (i.e. mathematical stability).

Regarding **Claim 10**, Wakeman discloses:

wherein said step (a) comprises the step of evaluating the metric with respect to integrity of a data source.

Column 6 line 54-56, the metrics are evaluated with respect to integrity of a data source over time as more accurate and consistent numerical values become available. See line 51-53 – the findings of the scorecards are qualified (i.e. the data is validated) thus the metrics represented on the scorecard are evaluated with respect to data integrity.

Regarding **Claim 14**, Wakeman discloses:

Wherein said step (b) comprises the step of adding together the at least one factor score to form the final weighted numerical assessment of the metric.

Column 4 line 60, this is an equation that provides adding together 3 factor scores for form a final weighted numerical assessment of the metric (i.e. the confidence score).

Claims 15, 16, 18, 20, 22, 24, 28 and 29 recite limitations similar to those addressed by the rejection of **Claims 1, 2, 4, 6, 8, 10 and 14** above, and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. **Claims 3 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wakeman** in view of **Pithawala US 6,747,957 (hereinafter Pithawala).**

Regarding **Claim 3**, Wakeman teaches summing scores to form a total score as discussed above, but does where the scores to be summed are:

i) scoring the number of run failures over a previous predetermined interval of time;

ii) scoring the number of system failures over the interval;

iii) scoring the number of partial runs over the interval; and

Pithawala teaches:

i) scoring the number of run failures over a previous predetermined interval of time;

Column 10 line 54, software failures (i.e. run failures) are counted (i.e. scored) by determining the specific failures in a given time interval – see also column 11 line 27-30, failures are counted within a 6 minute interval.

ii) scoring the number of system failures over the interval;

Column 10 line 54, system failures are counted (i.e. scored) by determining the specific failures in a given time interval – see also column 11 line 27-30, failures are counted within a 6 minute interval.

iii) scoring the number of partial runs over the interval; and

Column 7 line 31-34, partial runs (i.e. availability) is scored by determining the total number of unavailable minutes over an interval.

Both Wakeman and Pithawala address providing numerical scores of complex systems to assess reliability, thus both Wakeman and Pithawala are analogous art.

Pithawala teaches that his method of assessing network reliability allows for engineers to make quality improvements (column 3 line 39-41).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding summing different scores to come up with a composite total score, to include where those individual scores are various measures of network performance, as taught by Pithawala, because it would allow engineers to make quality improvements in reliability for a network.

Claim 17 recites limitations similar to those addressed by the rejection of **Claim 3** above, and is therefore rejected under the same rationale.

11. **Claims 5, 7, 9, 11, 19, 21, 23 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wakeman** in view of **Florac.**

Florac, William A; Park, Robert E; Carleton, Anita D; "Practice Software Measurement: Measuring for Process Management and Improvement", April 1997, SEI CMU Guidebook, CMU/SEI-97-HB-003,

http://www.sei.cmu.edu/pub/documents/97.reports/pdf/97hb003.pdf, pp.1-11,15-61,A130.

Regarding **Claim 5**, Wakeman teaches scoring various elements used in the evaluation of a metric, as discussed above. Wakeman also teaches where elements are summed after scoring to form a composite score (i.e. a business rules factor score).

Wakeman does not teach where the elements that are scored are:

i) the presence of clear business rules;

ii) the extent of definition and documentation of business rules

iii) the extent to which a method used to develop the metric reflects the business rules.

iv) the consistency of the business rules with corporate strategies and processes;

Florac teaches using the following elements in evaluating a process:

i) the presence of clear business rules;

Page 43 Figure 3-7, The table "Measurable Entities in a Software Process" contains"policies" and "procedures" which comprise the presence of clear business rules that are measurable entities

ii) the extent of definition and documentation of business rules

page 46 paragraph 1, the clear business rules that are measurable entities above, must be defined and documented so that they can be communicated to others – see page 47 paragraph 1line 1-3.

iii) the extent to which a method used to develop the metric reflects the business rules.

Page 47 paragraph 3 line 2, repeatability details the extent to which a method used to develop the metric reflects the business rules, because it would ensure that the measurements are repeatable since they reflect the business rules – see Figure 3-7 'policies' and 'procedures' being clearly defined impacts the method used to develop the metric.

iv) the consistency of the business rules with corporate strategies and processes;

Figure 2-11 illustrates how business rules should be aligned with the corporate strategies and processes – see also page 30 paragraph 3 line 3-9.

Wakeman and Florac address using measurements to improve business performance, and thus both Wakeman and Florac are analogous art.

Florac teaches that using his approach to measurement of processes ensures that an organization will be successful in meeting their goals by focusing on critical factors (page 2 paragraph 6 line 1-4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding scoring and summing the scores for various process measurement aspects, to include the steps where those process measurement aspects are related to various business rules, as discussed above, because it would ensure the organization focuses on the critical factors necessary to meet its goals.

Regarding **Claim 7**, Wakeman teaches scoring various elements used in the evaluation of a metric, as discussed above. Wakeman also teaches where elements are summed after scoring to form a composite score (i.e. a business rules factor score).

Wakeman does not teach where the elements that are scored and summed are:

i) the presence of manual processing in retrieving data used to produce the metric;

ii) the presence of manual processing in populating a data structure;

iii) the presence of manual processing in determining the metric;

Florac teaches the following elements in evaluating a process:

i) the presence of manual processing in retrieving data used to produce the metric;

Page 47 paragraph 1 line 4-5, data is collected (i.e. manually) to produce a metric

Page 47 paragraph 3 line 2, ensuring the metric is repeatable by others, including whatever is necessary to gather data and process it

ii) the presence of manual processing in populating a data structure;

Page 48 paragraph 3 line 1-3, a checklist is used (i.e. a data structure that is populated) to manually process the metric.

iii) the presence of manual processing in determining the metric;

Page 47 paragraph 3 line 2, ensuring the metric is repeatable by others (i.e. through manual processing to determine the metric), including whatever is necessary to gather data and process it. Since the reference discusses the issue of repeatability by individuals, then it is clear that manual processing and not automatic processing is involved.

Wakeman and Florac address using measurements to improve business performance, and thus both Wakeman and Florac are analogous art.

Florac teaches that using his approach to measurement of processes ensures that an organization will be successful in meeting their goals by focusing on critical factors (page 2 paragraph 6 line 1-4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding scoring and summing the scores for various process measurement aspects, to include the steps where those process measurement aspects utilize manual processing, as discussed above, because it would ensure the organization focuses on the critical factors necessary to meet its goals.

Regarding **Claim 9**, Wakeman teaches scoring various elements used in the evaluation of a metric, as discussed above. Wakeman also teaches where elements are summed after scoring to form a composite score (i.e. a business rules factor score).

Wakeman does not teach where the elements that are scored and summed are:

i) a mathematical calculation to derive the metric; and

ii) a reliable non-mathematical method to derive the metric;

Florac teaches the following elements in evaluating a process:

i) a mathematical calculation to derive the metric; and

Page 48 paragraph 3 line 5-8, value and array counts are mathematical calculations used to derive the metric.

ii) a reliable non-mathematical method to derive the metric;

page 47 paragraph 5 line 1-page 48 paragraph 1 line 3, a reliable non-mathematical method to derive the metric is described as a list of instructions provided for an individual so they can derive the metric themselves.

Wakeman and Florac address using measurements to improve business performance, and thus both Wakeman and Florac are analogous art.

Florac teaches that using his approach to measurement of processes ensures that an organization will be successful in meeting their goals by focusing on critical factors (page 2 paragraph 6 line 1-4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding scoring and summing the scores for various process measurement aspects, to include the steps where those process measurement aspects are a mathematical and non-mathematical way to derive the metric, as discussed above, because it would ensure the organization focuses on the critical factors necessary to meet its goals.

Regarding **Claim 11**, Wakeman teaches scoring various metrics to provide a composite measurement of a metric. Wakeman also teaches, as discussed above in Claim 10, evaluating the metric with respect to the integrity of data.

Wakeman does not teach:

wherein said step of evaluating the metric with respect to integrity of the data source comprises the steps of :

i) determining whether the data source has been validated;

ii) if the data source has been validated, scoring the recency and automation of the validation to form an integrity factor score; and

iii) if the data source has not been validated, assigning the value of zero as the integrity factor score.

However Official Notice is taken that these steps to validate data are old and well known in the art. It is old and well known to check and determine if a data source has been validated. If the source has been validated to flag or check the data (e.g. with a '1' or true) and has not been validated to set the flag to a value of zero (i.e. false). These steps provide an easy and simple to use way to note if a data source has been validated (i.e. is accurate).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding scoring and summing the scores for various process measurement aspects, to include the steps where a data source is scored as a 1 or 0, as discussed above, because it would provide an easy to use and simple way to show that the data source used in a metric was accurate.

Claims 19, 21, 23 and 25 recite limitations similar to those addressed by the rejection of **Claims 5, 7, 9 and 11** above, and are therefore rejected under the same rationale.

12. **Claims 12, 13, 26 and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wakeman** in view of **Eriksson US 6,502,063 (hereinafter Eriksson).**

Regarding **Claim 12**, Wakeman does not teach:

wherein said step (a) comprises the step of evaluating the metric with respect to supporting detail for the metric.

Eriksson teaches:

wherein said step (a) comprises the step of evaluating the metric with respect to supporting detail for the metric.

Column 5 line 17-20, if no supporting detail exists for a particular measurement (i.e. metric) then the measurement is evaluated as being at zero.

Wakeman and Eriksson both address using measurements processed by computers, thus both Wakeman and Eriksson are analogous art.

Eriksson teaches that his invention has applicability where the data sources are potentially corrupt to provide reliability and accuracy in the final data set.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding summing different scores to come up with a composite total score, to include the step of evaluating the metric with respect to supporting detail for the metric, as taught by Eriksson, because it would provide reliability and accuracy in the final data set.

Regarding **Claim 13**, Wakeman teaches summing scores of various subelements to form a total score as discussed above.

Wakeman does not teach where the subelements are comprised of:

i) determining a length of time for which valid supporting historical detail has been available;

ii) determining a degree of interruption of the valid supporting historical detail; and

iii) scoring, in aggregate, the length of time for which valid supporting historical detail is available and the degree of interruption of the valid supporting historical detail, to form a supporting detail factor score.

Eriksson teaches where the subelements are comprised of:

i) determining a length of time for which valid supporting historical detail has been available;

column 5 line 49-51, the length of time around an instant is used to determine if data is available (the sampling instant) – column 6 line 25-28

ii) determining a degree of interruption of the valid supporting historical detail.

Column 5 line 27-30, a degree of interruption of the valid supporting historical detail is performed when the sampling inputs for a particular measurement does not exist, then the input is set to zero. See line 33-35, if there is a degree of interruption such that some data does exsist, then the value can be set (i.e. degree of interruption determined) by setting the reliability indicator to between zero and one.

Wakeman and Eriksson both address using measurements processed by computers, thus both Wakeman and Eriksson are analogous art.

Eriksson teaches that his invention has applicability where the data sources are potentially corrupt to provide reliability and accuracy in the final data set.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wakeman, regarding summing different scores to come up with a composite total score, to include the step of including a

degree of interruption and a length of time that supporting detail was available, as taught by Eriksson, because it would provide reliability and accuracy in the final data set.

Claims 26 and 27 recite limitations similar to those addressed by the rejection of **Claims 12 and 13** above, and are therefore rejected under the same rationale.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5371673 by Fan discloses an analysis system for scoring and storing information.

US 5504692 by Cardner discloses a method for improved flow data reconciliation.

US 6125453 by Wyss discloses a risk and reliability analysis for networks.

US 6125458 by Devan discloses a fault management system for a network.

US 6281834 by Stilp discloses a calibration for a wireless location system.

US 6317700 by Bagne discloses a computational method for performing numerical induction.

US 6611773 by Przydatek discloses a method for measuring and reporting the reliability of a system with improved accuracy.

US 6754843 by Lu discloses a network reliability and performance analysis system.

US 6938007 by Iulainello discloses a method of pricing application software based on a composite scoring approach.

US 5999902 by Scahill discloses a recognition system using a priori probability weighting factors.

Siriginidi, Subba Rao, "Enterprise Resource Planning in reengineering business", 2000, Business Process Management Journal, Vol. 6, Iss. 5, p.376, ProQuest ID 84987213.

Amaratunga, Dilanthi, "Assessment of facilities management performance – what next?", Jan/Feb 2000, Facilities, Vol. 18, Iss. ½, p.66, ProQuest ID 86926859.

Stivers, Bonnie P.; Joyce, Teresa, "Building a balanced performance management system", Spring 2000, SAM Advancement Management Journal, Cincinnati, Vol. 65, Iss. 2, p. 22, ProQuest ID 53387429.

Mallak, Larry A; Bringelson, Liwana S; Lyth, David M. "A cultural study of ISO 9000 Certification", Copyright 1997, MCB, International Journal of Quality and Reliability Management, Vol. 14, Issue 4, pp.1-15.

Dunaway, Donna K; Masters, Steve; "CMM[sm]-Base Appraisal for Internal Process Improvement (CBA IPI): Method Description", April 1996, Technical Report CMU/SEI-96-TR-007, ESC-TR-96-007, pp.1-46.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS 9-20-2005

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